WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4786

IN THE MATTER OF: Served March 12, 1996

Proposed Rulemaking Amending) Case No. MP-96-21
RULES OF PRACTICE AND PROCEDURE)
AND REGULATIONS, REGULATION NOs.)
51, 55 and 63)

Pursuant to Title II of the Compact, Article XIII, Section 3 and Commission Rule No. 30, the Commission hereby initiates a proposed rulemaking for the purpose of considering an amendment to Commission Regulation No. 51, "Definitions;" Regulation No. 55, "Tariffs;" and Regulation No. 63, "Content of Advertising Material."

BACKGROUND

On August 2, 1995, the Attorney General for the State of Maryland issued a formal advisory opinion concerning the jurisdiction of the Maryland Institute for Emergency Medical Services Systems (MIEMSS), Maryland's ambulance regulatory agency, over "litter van" service performed by WMATC carriers. 80 Op. Att'y Gen. No. 95-027 (Md. Aug. 2, 1995). As the Opinion notes, "[o]nly one or two [WMATC] carriers currently have separate tariffs for litter or stretcher van service, but others could add this service simply by amending their tariffs." Opinion at 5.

The Opinion construes Article XIV, Section 2, of the Compact, which suspends the applicability of the laws of the signatories "relating to transportation subject to" the Compact, while preserving the right and responsibility of the signatories to inspect carrier equipment and facilities. The Opinion finds the term "relating to" broad enough to encompass laws governing the licensing of ambulances and litter vans by MIEMSS and reasons that the exception for inspection of equipment and facilities was meant to extend primarily to motor vehicle laws. Opinion at 7. An opposite conclusion would result in dual regulatory jurisdiction on the most fundamental matters, contrary to Supreme Court and DC Circuit precedent construing the Compact. Opinion at 8-9. Consequently, the Opinion concludes "MIEMSS may generally regulate litter van service within Maryland, but its authority to regulate such service is preempted to the extent that the WMATC asserts jurisdiction over such service within the Washington Metropolitan District." Opinion at 10.

The Commission has received correspondence supporting our exercise of jurisdiction over nonemergency litter-van service from Mr. R. Gregory Mills, Program Manager, Montgomery County Department of Transportation, Paratransit Section; Mr. James G. Glover at the Maryland Department of Health and Mental Hygiene, Division of Community Support Services; Health Management Strategies International, Inc., which administers the case management program for Blue Cross Blue Shield of the National Capital Area; and Arcola Nursing and Rehabilitation Center in Silver Spring, MD. Generally, these parties have identified a need for transportation of persons who cannot sit up for extended periods of time

but who do not require transportation in vehicles outfitted with life support equipment or operated by persons with training in life support procedures.

This notice of proposed rulemaking examines the authority of the Commission to regulate nonemergency stretcher transportation, reviews the vehicle-inspection exception under Article XIV, Section 2(b), and proposes amendments to Regulation Nos. 51, 55 and 63 to prohibit WMATC carriers from holding themselves out as capable of rendering life support service.

I. WMATC JURISDICTION OVER NONEMERGENCY STRETCHER TRANSPORTATION

In this part we analyze Commission precedent supporting WMATC jurisdiction over nonemergency stretcher transportation and discuss the related topics of ancillary services authorized or required under a certificate of authority and the scope of insurance coverage under the Commission's certificate of insurance.

A. WMATC Precedent

Two WMATC decisions are helpful in determining whether the Commission may authorize nonemergency stretcher transportation. The first is In re Rodwell Buckley t/a Elrod Transp. Serv., No. 337, Order No. 1749 (Sept. 16, 1977), remanded in part on other grounds, sub nom., D.C. Medicaid Transp., Inc. v. WMATC, No. 78-1021 (D.C. Cir. June 15, 1978), in which the Commission granted authority to ten carriers to transport "persons confined to wheelchairs." Order No. 1749 at 31. That authority was restricted to "the transportation of non-ambulatory participants in the Medicaid program of the District of Columbia." Id. at 32. The Commission held that such transportation service was within its jurisdiction on the grounds that "the prime business purpose of each applicant is the derivation of revenue from transportation," and that "the pure purpose of the service proposed is the movement of passengers between points in the Metropolitan District." Id. at 25.

The second decision is In re Perkin's Ambulance & Wheelchair Serv., Inc., No. AP-85-37, Order No. 2898 (Aug. 21, 1986), in which the Commission granted the application of a District of Columbia corporation seeking "a certificate . . . to transport non-ambulatory persons." Id. at 1. The applicant adduced evidence of a general "need for transportation of non-ambulatory persons principally for medical appointments," and of a particular "need for wheelchair vans." Id. at 4, 8. The primary purpose of the proposed service, however, was transportation. Id. at 2.

These decisions stand for the proposition that the Commission may authorize carriers to transport nonambulatory passengers between points in the Metropolitan District, including to and from clinics, hospitals, physicians' offices and the like. The Commission has referred to such persons as "transportation-disadvantaged." These are individuals who because of age or physical or mental disability require special accomodations in order to use transportation services as effectively as persons who are not so affected. In re National Children's Center, Inc., No. AP-91-01, Order No. 3807 (Aug. 15, 1991). The fact that some may be on stretchers while others are in wheelchairs is not dispositive in and

of itself.[1] Our jurisdiction does not turn on the specific type of mobility aid a particular passenger's mental or physical condition necessitates. Rather, the salient considerations are whether the primary business purpose of the carrier is the derivation of revenue from transportation and whether the primary purpose of the proposed service is the movement of passengers between points in the Metropolitan District. Buckley, Order No. 1749 at 25; Perkins, Order No. 2898 at 2.

B. Ancillary Services Authorized or Required

The scope of each certificate of authority issued by the Commission depends in the first instance on the transportation proposed by the carrier in its application.[2] Neither the Compact nor the Commission's regulations and orders thereunder define the term "transportation." Under such circumstances our practice is to examine pertinent Interstate Commerce Act (ICA) precedent as a guide in discerning Congressional intent.[3]

According to the ICA, "transportation" includes not only the movement of passengers but "services related to that movement," as well. 49 U.S.C. § 10102(28) (1995). Services which may be considered in determining the merits of an application for operating authority are known as "transportation services." Griffin Mobile Home Transp'g Co. Contract Car. App., 103 M.C.C. 482, 488-89 (1966) (on reconsideration), aff'd sub nom., National Trailer Convoy, Inc. v. United States, 293 F. Supp. 630 (N.D. Okla. 1968), aff'd per curiam, 394 U.S. 849 (1969).[4] Transportation services include only those services which are "directly, intimately and closely connected with transportation," "universally recognized as being connected with transportation," or "incidental" to transportation, Investigations into Limitations of Car. Serv. on C.O.D. & Freight-Collect Shipments, 356 I.C.C. 37, 1978 Fed. Car. Cas. ¶36,840 at 47,146 (1977) (on reconsideration) (citations omitted), with the term incidental being held to mean "a minor adjunct to the prime matter, of lesser significance, but related and necessary to the complete effectuation of the matter in chief." Griffin, 103 M.C.C. at 498. Thus, whether an ancillary service is affirmatively authorized under a

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[1] Common carrier transportation of passengers on stretchers is not new. As early as 1943, the Dayton Union Railway Company transported passengers on stretchers under its ICC certificate. See Dayton Union Ry. Co. Tariff for Redcap Serv., 256 I.C.C. 289, 304 (1943) (no Redcap charge for handling stretchers).

[2] Compact, tit. II, art. XI, § 7(a).

[3] See eg., Easy Travel, Inc. v. Jet Tours USA, Inc., FC-94-01, Order No. 4649 (Aug. 22, 1995) (applying ICC precedent to determine whether corporation was "carrier" or "broker"); In re Title II, Article XII, Section 1(c) of the Compact, No. MP-83-01, Order No. 2559 (May 24, 1984) (applying ICC precedent in rulemaking defining term "bona fide taxicab service").

[4] The distinction between transportation services and nontransportation services has become less important at the federal level with the increased emphasis on competition under the Motor Carrier Act of 1980 and the Bus Regulatory Reform Act of 1982.

certificate of authority depends on whether it may be classified as a transportation service.

1. Life Support Service

Life support service lacks the attributes of transportation service. The delivery of medical care is not directly, intimately and closely connected with transportation of passengers for hire as that term is understood and used by the passenger carrier industry. The markets for medical services exist independently of the markets for transportation services. One service is not a complement for the other in an economic sense. An increase in demand for one does not lead ineluctably to an increase in demand for the other. Medical care is not universally recognized as being connected with mass transit, sightseeing, charter service, shuttle service, taxicab service or other forms of transportation for hire common to the class of carriers the Commission is charged with regulating. It is not normally thought of as an essential element of common carriage and should not be regarded as something the Commission affirmatively "authorizes."

Although ambulances are "passenger vehicles for hire" in a literal sense,[5] the Commission historically has not asserted jurisdiction over ambulance service because the primary purpose of such service is not transportion of passengers but, rather, the provision of life support service -- "the movement of passengers [being] a mere adjunct to the emergency medical diagnosis and/or treatment administered." Buckley, Order No. 1749 at 25.[6] Any passenger requiring, requesting or expecting transportation in a vehicle outfitted with life support equipment or operated by persons with training in life support procedures, should be referred to an ambulance service. On the other hand, as long as a carrier does not hold itself out to the public as a provider of life support services, the fact that on occasion a particular passenger may be incapable of travelling in an upright position will not exempt the carrier from our jurisdiction.[7]

We implicitly applied this reasoning in In re Ironsides Transport, Inc., No. AP-94-01, Order No. 4257 (March 17, 1994). The applicant in that proceeding proposed a tariff containing "per capita mileage rates for wheelchair-bound and litter/stretcher-bound, non-Medicaid passengers." The application stated that Ironsides' vehicles would be "staffed by First Aid certified drivers and attendants," but this was not a factor in our decision to grant the application. See Order No. 4257 at 1-2. Moreover, there was no claim that Ironsides' vehicles would be outfitted with life support equipment. On that basis, we found applicant fit to provide the proposed service and found the proposed transportation consistent with the public interest.

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[5] Hazen v. Chambers, 108 F.2d 741 (D.C. Cir. 1939).

[6] Accord Lonnie W. Dennis Common Car. App., 63 M.C.C. 66, 70 (Nov. 5, 1954) (ambulance service implies emergency situations); Union Funeral Ass'n Common Car. App., 42 M.C.C. 52, 54 (1943) (movement of sick and injured merely incidental to general business of ambulance service, which is not transportation).

[7] Likewise, a carrier which does not provide ambulance service may not evade our jurisdiction simply by employing CPR trained personnel and advertising that fact to the public.

We recognize that our determination of no jurisdiction over life support service runs counter to many prior decisions where an award of operating authority was granted in part on the ground that the applicant proposed such service. Most of these decisions merely noted that the applicant's drivers would be trained in first aid and CPR techniques.[8] Some went much further.[9] The Perkins decision represents the high-water mark in this regard. In that case the applicant proposed the following:

> The transportation of non-ambulatory persons between points in the Metropolitan District. Each vehicle will be equipped with equipment which will handle emergencies and other extraordinary situations, including a hydraulic lift, wheelchair tie-downs, portable oxygen, a trauma kit, pressure cuff, stethescope and cellular telephone. Each vehicle will be operated by an individual registered as an Emergency Medical Technician trained in the use of that equipment and in life saving techniques.

We expressly overrule these prior decisions, and any others like them, to the extent they assert jurisdiction over life support service.

In conclusion, where the primary business purpose of a carrier is the derivation of revenue from transportation and the primary nature of the service offered is the movement of passengers between points in the Metropolitan District -- and the passengers do not require, request or expect the carrier to furnish life support services -- a carrier may transport passengers in wheelchairs and on stretchers under a WMATC certificate of authority, provided the carrier's tariff on file with the Commission authorizes such service.

2. Embarking and Disembarking Assistance

Embarking and disembarking assistance possess the attributes of a transportation service, and Interstate Commerce Commission (ICC) precedent holds this is no less true with respect to passengers on stretchers. In Dayton Union Ry. Co. Tariff for Redcap Serv., 256 I.C.C. 289 (1943), the ICC held that "the service of carrying to or from trains the hand baggage and personal effects of passengers" was "transportation" within the meaning of the Interstate Commerce Act. Id. at 302. This Redcap service was limited to passengers "boarding or leaving trains," id. at 299, and was found to facilitate their "safe and speedy movement." Id. at 300. Likewise, assisting a passenger in boarding and alighting

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[8] See In re RDM Enters., Inc., & Murray's Transp. Serv., Inc., No. AP-91-19, Order No. 3801 (Aug. 6, 1991) (Red Cross first aid & CPR); In re Kowalski Med. Support Servs., Inc., No. AP-90-49, Order No. 3774 (June 10, 1991) (CPR); In re Diamond Transp. Servs., Inc., No. AP-90-07, Order No. 3520 (June 22, 1990) (CPR, first aid); In re Mercy Ambulette Servs., Inc., No. AP-88-38, Order No. 3288 (Feb. 8, 1989) (CPR); In re Wheelchair Mobile Transport, Inc., No. AP-86-31, Order No. 2930 (Nov. 10, 1986) (CPR); In re Rehab Transp., Inc., No. 300, Order No. 1526 (Mar. 30, 1976) (Red Cross training, first aid equipment).

[9] See In re Care Access, Inc., No. AP-88-07, Order No. 3195 (July 8, 1988) (officers/drivers are registered nurses); In re Ironsides Med. Transp. Corp., No. 303, Order No. 1527 (Mar. 30, 1976) (drivers are emergency medical technicians).

from the vehicle facilitates the safe and speedy movement of the passenger. In the case of a stretcher-bound passenger, it is a necessary prerequisite to the movement of the passenger in the carrier's vehicle. Moreover, it would be rather peculiar to regard as transportation the carrying of a passenger's baggage to and from the vehicle but not the passenger. A survey of general tariffs for transportation of Medicaid recipients indicates that assisting nonambulatory passengers in and out of the vehicle is universally recognized as being incidental to their movement. Medicaid currently pays each carrier an additional fee when the services of an "extra assistant" are required.

3. Duty to Provide Ancillary Transportation Services

The Compact mandates that each carrier shall provide safe and adequate transportation service, equipment and facilities, and prohibits carriers from engaging in unduly discriminatory practices.[10]

Under antidiscrimination regulations promulgated by the United States Department of Transportation (DOT) pursuant to the Americans with Disabilities Act (ADA),[11] a carrier which operates a demand responsive transportation system and purchases or leases a new vehicle,[12] other than an automobile or an over-the-road bus,[13] must ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the system, when viewed in its entirety, meets the standard for equivalent service.[14] 49 C.F.R. § 37.103(c),(d). To be considered accessible, a van or bus, other than an over-the-road bus, must have a level-change mechanism or boarding device (e.g., lift or ramp) and securement devices for wheelchairs and similar mobility aids. 49 C.F.R. § 38.23(a). Lifts must accomodate passengers with walkers, crutches, canes or braces. 49 C.F.R. § 38.23(b)(12). Where necessary or upon request, the carrier's personnel must assist disabled passengers with the use of securement systems, ramps and lifts -- even if it is necessary for the personnel to leave their seats to provide this assistance. 49 C.F.R. § 37.165(f). Although over-the-road buses need not be equipped at this time with any particular boarding assistance devices, the operator must provide boarding and disembarking assistance to disabled passengers when the need arises, including assistance moving to and from the bus seat for the purpose of boarding and disembarking. 49 C.F.R. § 37.169 & Appx. D, § 37.169.[15]

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[10] Compact, tit. II, art. XI, §§ 5, 16.

[11] 42 U.S.C. §12101 et seq.

[12] Used vehicles, whether purchased or leased, are excluded. 49 C.F.R. Appx. D, § 37.103.

[13] *Over-the-road-bus* means a bus characterized by an elevated passenger deck located over a baggage compartment. 49 C.F.R. § 37.3.

[14] The definition of equivalent service may be found at 49 C.F.R. § 37.105.

[15] Prior to enactment of the ADA, the ICC interpreted its disabled passenger access regulation, 49 C.F.R. §1063.8, to mean that a "bus driver on the road should not have to assist a nonambulatory person boarding a bus because the driver may not be physically capable of

A finding of noncompliance with ADA regulations would be relevant to a determination of whether a carrier had engaged in undue discrimination under the Compact. Moreover, once a carrier voluntarily accepts the responsibility of transporting a nonambulatory passenger between points in the Metropolitan District, the duty to provide safe and adequate transportation may compel a carrier to provide substantial disembarking assistance beyond that required by the ADA. Cf., McCluskey v. United States, 583 F. Supp. 740, 750-51 (S.D.N.Y. 1984) (ambulette driver breached duty of care by not delivering passenger into custody of competent hospital personnel). This should be all the more obvious where the passenger is on a stretcher and unable to move without assistance.

C. Scope of Vehicle Insurance Coverage

Under Title II of the Compact, Article XI, Section 7(f), a person holding a certificate of authority must comply with Commission regulations regarding maintenance of an insurance policy securing the carrier against any final judgment for bodily injury or death of a person, or for loss or damage to property of another, resulting from the operation, maintenance, or use of a motor vehicle or other equipment in performing transportation under the carrier's certificate of authority.

Commission Regulation No. 58-01 states that a carrier must secure the public by means of an insurance policy or policies and, together with Regulation No. 58-02, requires each carrier to maintain a certificate of insurance on file with the Commission, which under Regulation No. 58-04 must be in the form prescribed by the Commission. The current form was adopted in Order No. 4203, served November 15, 1993, and provides in pertinent part:

> In consideration of the premium stated in the Policy, the Company agrees to pay, within the limits of liability prescribed herein, any final judgment against the Insured for bodily injury or death of a person, or for loss or damage to property of another, resulting from the operation, maintenance, or use of a motor vehicle in performing transportation subject to certification under the Compact, whether or not such motor vehicle is described in the Policy.

Rules of Practice and Procedure and Regulations of the WMATC, Appendix, Certificate of Insurance (emphasis added).

Certificates of insurance are construed in accordance with the terms of the statutes under which they are promulgated. Integral Ins. Co. v. Lawrence Fulbright Trucking, Inc., 930 F.2d 258 (2d Cir. 1991). When an insurance company executes a certificate of insurance to qualify

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assisting the passenger." Smith v. Greyhound Lines, Inc., 1987 Fed. Car. Cas. (CCH) ¶37,337 at 47,542 (1987). That regulation has since been amended and now references DOT's ADA regulations. At the time the ADA regulations were adopted in final form, the DOT declined to adopt a blanket rule proposed by one commenter which would have permitted carriers to reject a passenger if the "driver reasonably believed that he or she could not assist the passenger without significant risk of injury," preferring instead to deal with such situations on a case-by-case basis. 56 Fed. Reg. 45,584, 45,586 (1991) (response to comment on proposed §37.5).

a carrier for operating authority, the insurance company assumes the full measure of liability imposed by the governing statute. Thompson v. Amalgamated Cas. Ins. Co., 207 F.2d 214 (D.C. Cir. 1953). The terms of such a statute become a part of the certificate and insurance policy. National Indemnity Co. v. Harper, 295 F. Supp. 749 (W.D. Mo. 1969).[16]

There is an extensive body of case law construing the phrase "resulting from the operation, maintenance, or use," and variations thereof. Naturally, injuries to passengers are covered under a certificate of insurance when they result from a collision and the carrier is at fault. Thompson, 207 F.2d at 215, 221; Harper, 295 F. Supp. at 754, 756; see also Oakridge Community Ambulance Serv., Inc. v. United States Fidelity & Guaranty Co., 563 P.2d 164 (Or. 1977) (en banc) (wrongful death allegedly resulting from delay in arrival of vehicle could have arisen out of use of vehicle); but see Employers' Commercial Union Ins. Co. of America v. Danches, 311 So.2d 758 (Fla. Dist. Ct. App. 1975) (per curiam) (death arising out of delay arises out of use of vehicle, but delay not accident within terms of policy), cert. denied, 327 So.2d 32 (Fla. 1976). Whether injuries arising out of the provision of ancillary services are covered depends on whether the services are transportation services.

1. Embarking and Disembarking Assistance

The majority of reported decisions hold that an accident which occurs while a passenger is being assisted to or from the vehicle is a covered event.

In Owens v. Ocean Accident & Guar. Corp., 109 S.W.2d 928 (Ark. 1937), a passenger on a cot was dropped and injured by two ambulance attendants while they carried her from house to ambulance. The injury was held to have occurred "by the reason of ownership, maintenance, or use" of the vehicle because carrying the cot from the passenger's house to the ambulance was "an essential transaction in connection with use" of the vehicle as an ambulance. Id. at 929, 930. It was significant that the insurance company knew the vehicle was to be used as an ambulance. Id. at 930.[17]

In Elliott v. Fireman's Ins. Co., 140 S.E.2d 524 (Ga. App. 1965), a stretcher-bound passenger was injured by two ambulance attendants as they attempted to lift the passenger from the stretcher into a chair inside the passenger's house. The injury was held to be one "arising out of the ownership, maintenance, or use" of the vehicle because it occurred

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[16] Local courts have long followed the majority rule. See e.g., Manufacturers Life Ins. Co. v. Capitol Datsun, Inc., 566 F.2d 354 (D.C. Cir. 1977); Export Leaf Tobacco Co. v. American Ins. Co., 260 F.2d 839 (4th Cir. 1958); Nationwide Mutual Ins. Co. v. United States Fidelity & Guaranty Co., 314 Md. 131, 550 A.2d 69 (1988).

[17] An insurance company is presumed to know the nature of its insured's operations. London Guarantee & Accident Co. v. C.B. White & Bros., Inc., 188 Va. 195, 49 S.E.2d 254 (1948). But see Wausau Underwriters Ins. Co. v. St. Barnabas Hosp., 534 N.Y.S.2d 982 (N.Y. App. Div. 1988) (mem.) (insured presumed to know terms of policy).

while the vehicle was being unloaded. Id. at 525. The policy defined "use" to include loading and unloading. Id. at 525.[18]

In Broome County Co-op Fire Ins. Co. v. Aetna Life & Cas. Co., 347 N.Y.S.2d 778 (N.Y. Sup. Ct. 1973), a private automobile passenger in a wheelchair was injured at the home of the driver when the driver attempted to pull the wheelchair up a ramp into the house. The policy covered injuries arising out of the loading or unloading of the vehicle. The court applied the "complete operation" rule to hold that the unloading clause covered not only the "immediate transference" of the passenger on and off the vehicle but the complete operation of transporting the passenger "between the vehicle and the place from or to which" the passenger was ultimately carried. Id. at 782-83.[19] The court found the parties had agreed beforehand that the driver would not only provide curb-to-curb transportation but assist the passenger from the vehicle into the house, as well. Id. at 782-83.

Apparently, the only contrary decision on point is J.T. Hinton & Son v. Employer's Liability Assurance Corp., 62 S.W.2d 47 (Tenn. 1933), which held:

> The transportation of sick persons from bed to street curb was a necessary incident to the conduct of complainants' business of operating an ambulance for hire, but was not a necessary incident to the operation or use of the ambulance as a motor vehicle, as the actual placing or removal of persons therein and therefrom would be.

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[18] The word "use" has been held to include loading and unloading in the absence of such a definition in the policy. United States v. Transport Indem. Co., 544 F.2d 393 (9th Cir. 1976); American Oil Co. v. Hardware Mutual Cas. Co., 408 F.2d 1365 (1st Cir. 1969); Hartford Accident & Indem. Co. v. Booker, 230 S.E.2d 70 (Ga. Ct. App. 1976); Pacific Auto Ins. Co. v. Commercial Cas. Ins. Co., 161 P.2d 423 (Utah 1945); Panhandle Steel Prods. Co. v. Fidelity Union Cas. Co., 23 S.W.2d 799 (Tex. Ct. App. 1929).

[19] In reaching this conclusion the court found the requisite causal link between the injury and the unloading of the vehicle. 347 N.Y.S.2d at 783. To be covered, however, an injury need not be the "proximate result" of using the vehicle in the strict legal sense of that term, although coverage will not arise if use of the vehicle was a "distinctly remote" factor, albeit within "the line of causation." McNeill v. Maryland Ins. Guaranty Ass'n, 48 Md. App. 411, 419, 427 A.2d 1056, 1061 (citing Panhandle), cert. denied, slip op. (Md. July 14, 1981); compare Panhandle, 23 S.W.2d at 802 ("resulting from" does not mean "proximately resulting from") with McCloskey & Co. v. Allstate Ins. Cos., 358 F.2d 544, 547 (D.C. Cir. 1966) ("arising out of" more liberal than "proximate cause"). Contra, Wausau Underwriters, 534 N.Y.S.2d at 983. Some courts seemingly require a stronger nexus if the policy does not expressly define use to include loading and unloading. Employers' Liability Assurance Corp. v. Indemnity Ins. Co. of North America, 228 F. Supp. 896, 898-99 (D. Md. 1964).

Id. at 48 (emphasis added).[20] Application of the complete operation rule would have yielded a different result in Hinton. See Broome County, 347 N.Y.S.2d at 781 (explaining Hinton). Each of the Compact signatories follows the complete operation rule.[21] Of course, even under Hinton, accidents which occur while boarding or deboarding would be covered under the carrier's motor vehicle insurance policy.

2. Life Support Service

Life support service, on the other hand, would not be covered, inasmuch as life support is not a transportation service authorized by the Commission. Case law supports this conclusion. For example, in Newman v. St. Paul Fire & Marine Ins. Co., 456 So.2d 40 (Ala. 1984), the court held that the death of a patient allegedly caused by negligent administration of oxygen by ambulance attendants enroute to the hospital did not "result[ ] from the ownership, maintenance or use" of the vehicle. Id. at 41-42. In Transit Cas. Co. v. Snow, 584 F.2d 97 (5th Cir. 1978) (per curiam), cert. denied, 440 U.S. 949 (1979), the court held that the death of a patient allegedly caused by strapping the patient down on his back while he was regurgitating was not caused by an "accident" within the meaning of the policy. Id. at 99.

II. VEHICLE INSPECTION EXCEPTION

The Compact suspends the applicability of each law, rule, regulation, or order of a signatory relating to transportation subject to the Compact, except laws relating to inspection of equipment and facilities.[22] The Attorney General's Opinion considers whether the "inspection exception" is wide enough to permit regulation of WMATC carriers by MIEMSS and concludes it is not. Our review of the legislative history of the Compact, Commission safety regulations and Compact precedent lead us to concur with the Attorney General that this exception refers primarily -- and with respect to vehicle inspections we might add exclusively -- to the motor vehicle laws of the several signatories.

A. Legislative History

When the Compact was originally enacted, the suspension provision read as follows:

> Upon the date this Act becomes effective, the applicability of all laws of the signatories, relating to or affecting transportation subject to this Act and to persons engaged therein, and all rules, regulations and orders promulgated or issued thereunder, shall except to

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[20] See also Interstate Fire & Cas. Co. v. Hartford Fire Ins. Co., 548 F. Supp. 1185 (E.D. Mich. 1982) (unattended stroke victim who fell before being placed in wheelchair was covered under general liability policy which excluded loading of auto; exclusionary clause strictly construed).

[21] E.g., Travelers Ins. Co. v. Employers' Liability Assurance Corp., 367 F.2d 205 (4th Cir. 1966) (MD); McCloskey & Co. v. Allstate Ins. Cos., 358 F.2d 544 (D.C. Cir. 1966) (DC); United States Fidelity & Guar. Co. v. Hartford Accident & Indemnity Co., 209 Va. 552, 165 S.E.2d 404 (1969) (VA).

[22] Compact, tit. II, art. XIV, § 2(a),(b).

> the extent in this Act specified, be suspended, except that --
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> The laws of the signatories relating to inspection of equipment and facilities, wages and hours of employees, insurance or similar security requirements, school fares, and free transportation for policemen and firemen shall remain in force and effect.

Wash. Metro. Area Transit Reg. Compact, Pub. L. No. 86-794, § 1, tit. II, art. XII, § 20(a)(1), 74 Stat. 1031 (1960). According to the legislative history, this section was "designed to remove the jurisdiction of the signatories over the transportation and persons subject to the compact . . . by suspension rather than repeal," except that the laws of the signatories described in the second paragraph were "exempted from such suspension." Wash. Metro. Area Transit Reg. Compact, S. REP. No. 1906, 86th Cong., 2d Sess. 20 (1960). The Alper Report[23] sheds some light on the meaning of these exceptions.

The Alper Report was submitted to Congress as part of the 1955 study leading to the formation of the Compact. See Alper Report at 1, House Hearings at 46 (report submitted as part of study directed by Congress); Alexandria, Barcroft & Wash. Transit Co. v. WMATC, 323 F.2d 777, 779 (4th Cir. 1963) (1955 study led to creation of Transit Commission). The Alper Report recommended the following:

> The jurisdiction of the compact commission would be limited to regulatory matters and would not be extended to other legislation dealing with the affairs of the carriers. Matters such as vehicle licensing, taxes, labor relations and regulation, and other such legislation would be left to the States. It would be well, however, to confer jurisdiction on the compact commission over safety standards for vehicles and personnel and over liability insurance requirements in order to achieve a uniformity throughout the area of regulation.

Alper Report at 46, House Hearings at 91. The report recognized that in the District of Columbia "motor vehicle registrations, licensing" and "inspections" were handled by the Department of Motor Vehicles and Traffic. This indicates the framers understood the exception for inspection of equipment referred to the motor vehicle laws.

The original Compact followed the Alper blueprint. Signatory responsibility for vehicle licensing and taxes was addressed in Article VII. Signatory jurisdiction over labor regulation, vehicle inspections and insurance requirements was addressed in Article XII, Section 20(a)(1). Commission responsibility for promulgating uniform vehicle safety and insurance standards was set forth in Article XII, Sections 3,

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[23] JEROME M. ALPER, TRANSIT REGULATION FOR THE METROPOLITAN AREA OF WASHINGTON, D.C. (1955) (prepared for National Capital Planning Commission & National Capital Regional Planning Council) (printed in District of Columbia, Maryland and Virginia Mass Transit Compact: Hearings on H.J. Res. 402 Before Subcomm. No. 3 of the House Comm. on the Judiciary, 86th Cong., 1st Sess. 43-101 (1959)) [hereinafter "House Hearings"].

9 and 15. Commission responsibility for inspecting a carrier's equipment and facilities as a means of enforcing those standards was prescribed in Article XII, Section 10. Thus, as envisioned by the Alper Report, the signatories were still responsible for enforcing their motor vehicle laws, while the Commission was charged with promulgating uniform vehicle safety standards,[24] and although the signatories retained responsibility for inspecting vehicles and setting insurance requirements, that jurisdiction now was shared with the Commission.

B. Commission Safety Regulations

The Commission's initial safety regulations reflect the Commission's contemporaneous construction of the inspection exception. The Commission adopted its first safety regulations in 1963.[25] The regulations established detailed safety standards for vehicles and drivers, while respecting the role played by the signatories. Regulation No. 100-05 mandated strict compliance with "the motor vehicle laws of the States of Maryland, Virginia, and the District of Columbia, and of the local jurisdictions," and Commission regulations were to be observed by carrier and driver alike to the extent the regulations imposed a duty greater than, and not in conflict with, those laws.[26] Regulation No. 110-01 confirmed the right of duly authorized Commission representatives "to enter into or upon any bus" for the purpose of ascertaining compliance.

The current safety regulation, Regulation No. 64, promotes uniformity by adopting federal inspection requirements that may be satisfied by complying with state inspection requirements. Regulation No. 64, was adopted in 1991[27] and reads as follows: "The Commission adopts and incorporates herein by reference the Federal Motor Carrier Safety Regulations as amended from time to time, to the extent that the said regulations apply to the operations of passenger carriers. These regulations are set out in Title 49 of the Code of Federal Regulations." Pursuant to 49 C.F.R. Part 396, commercial motor vehicles must be inspected annually. The Federal Highway Administration has determined that the inspection programs of the District of Columbia, Maryland and Virginia "are comparable to, or effective as, the Federal [periodic inspection] requirements" contained in Part 396.[28] Further, the Commission conditions the issuance of each certificate of authority on

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[24] Uniformity through "elimination of multiple regulation," was predicted to "have the incidental, though by no means unimportant, benefit of reducing the burden on the operating companies of complying with regulation in terms of both time and expense." Alper Report at 10, House Hearings at 55.

[25] In re Safety Regs., No. 37, Gen. Order No. 8 (Sept. 20, 1963).

[26] Maryland's highest Court apparently agrees with this construction. See Maryland Automobile Insurance Fund v. Sun Cab Co., 506 A.2d 641 (Md. 1986) (Commission has been given authority to require interstate taxicab liability insurance coverage greater than that specified by the licensing jurisdiction).

[27] In re Rules of Prac. & Proc. & Regs., No. MP-91-05, Order No. 3600 (Jan 17, 1991).

[28] 59 Fed. Reg. 17830 (1994).

the applicant filing proof that its vehicles have passed safety inspection by one of the three jurisdictions or the United States Department of Transportation.

C. Compact Precedent

Shielding carriers from duplicative or multiple inspection requirements comports with Compact case law. The courts have consistently construed the Compact to minimize dual regulatory jurisdiction on fundamental matters. See Universal Interpretive Shuttle v. WMATC, 393 U.S. 186, 189 (1968) (construing Compact to avoid "dual regulatory jurisdiction overlapping on the most fundamental matters"); D.C. Transit Sys., Inc. v. WMATC, 420 F.2d 226, 229 (D.C. Cir. 1969) (quoting Universal Shuttle). The DC Circuit has expounded further on this principle.

> The Washington Metropolitan Area Transit Regulation Compact confers on the Commission general regulatory powers over transit operations within the Washington Metropolitan Area Transit District. The detailed powers and duties of the Commission are set forth in Title II, and are indeed extensive. . . .
>
> While the statutory provisions just outlined may not explicitly negative the existence of any jurisdiction other than that specified in the Compact, the exercise of which would in some manner affect transit operations, the overall scheme tends to suggest that the exercise of a jurisdiction which might conflict with the jurisdiction of the Commission is to be sharply circumscribed. It is familiar learning that when Congress has provided for a coherent scheme of statutory regulation, the jurisdiction of the designated regulatory agency is to be construed, wherever possible, as exclusive of any arguably parallel jurisdiction. . . .

Democratic Central Comm. v. D.C. Transit Sys., Inc., 459 F.2d 1178, 1180-81 (D.C. Cir. 1972) (footnotes omitted) (emphasis in original).

D. Conclusion

Construing the Compact as a whole points to where the balance should be struck for the inspection exception. Under the Compact, "[e]ach of the signatories pledges to each of the other signatories faithful cooperation in the regulation of passenger transportation within the Metropolitan District and agrees to enact any necessary legislation to achieve the objectives of the Compact for the mutual benefit of the citizens living in the Metropolitan District." Compact, tit. I, art. IX (emphasis added). Vehicle inspection requirements which meet the "mutual benefit" test clearly fit within the exception. Conversely, because determining carrier fitness in the Metropolitan District is exclusively the province of the Commission, vehicle inspection requirements that effectively act as a surrogate for measuring the fitness of a carrier, as opposed to the road-worthiness of a carrier's vehicles, would not fall within the exception. Otherwise, the exception would swallow the rule. Inasmuch as the MIEMSS vehicle inspection regulations go beyond ensuring the road-worthiness of vehicles, we concur with the Maryland Attorney General that those regulations do not fall within the exception under Article XIV, Section 2(b), of the Compact.

III. PROPOSED AMENDMENTS

The following amendments are proposed for the purpose of prohibiting WMATC carriers from attracting riders by offering life support services.

A. Regulation No. 51

The Commission proposes adding the following definition to Regulation No. 51.

51-12. Life support service means any service rendered for the purpose of sustaining life, including but not limited to emergency first aid and manual cardiopulmonary resuscitation procedures, administration of oxygen, intravenous and electro-cardiopulmonary resuscitation, cardiac monitoring, cardiac defibrillation, advanced airway management, intravenous therapy, administration of drugs and other medicinal preparations, and administration of intravenous fluids.

B. Regulation No. 55

The Commission proposes adding the following paragraph to Regulation No. 55.

55-09. No tariff may contain a rate, rule or regulation for life support service. Such service may not be provided under a WMATC tariff.

C. Regulation No. 63

The Commission proposes adding the following paragraph to Regulation No. 63.

63-05. No carrier may hold itself out to the public as being capable of rendering life support service.

THEREFORE, IT IS ORDERED:

1. That a rulemaking is hereby proposed for the purpose of considering an amendment to the Commission's Rules of Practice and Procedure and Regulations, Regulation Nos. 51, 55 and 63, as herein described.

2. That the Commission staff shall publish a single notice of this proceeding in a newspaper of general circulation in the Metropolitan District, no later than March 15, 1996.

3. That any person desiring to comment on the amendments proposed in this notice shall file an original and four copies of such comment at the office of the Commission, 1828 L Street, N.W., Suite 703, Washington, DC 20036-5104, on or before May 13, 1996.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER AND LIGON:

William H. McGilvery
Executive Director